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July 12, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Elizabeth Festa
Bridge News
600 14th Street NW
Suite 700
Washington DC 20005

CC Docket 98-141

Re: Freedom of Information Act Control No. 21-186

Dear Ms. Festa:

This is in response to your Freedom of Information Act (FOIA) request received in the Commission's FOIA Office via the Internet on June 14, 2001 and amended on June 18, 2001. Pursuant to the FOIA, you request access to the following:

- 1) materials relating to voluntary payments triggered under the SBC/Ameritech Carrier-to-Carrier Performance Plan including the total payment assessed before applying the caps for each performance measurement and for each state since August 2000;
- 2) the total offsets applied to the pre-cap payments, including competitive local exchange carrier (CLEC)-negotiated payments and payments made to state public utility commissions that have the effect of reducing the total payment to the United States Treasury under the SBC/Ameritech merger conditions; and
- 3) materials that would allow Bridge News to determine how SBC's performance improved and/or deteriorated in the various major performance categories as evaluated under the performance benchmarks since August 2000.

On July 6, 2001 you orally clarified that you sought only materials provided by SBC to the Commission, and not any Commission-prepared analyses or discussion of SBC's submissions.

Pursuant to the *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712 (1999), SBC Communications, Inc. (SBC) reports monthly performance data reflecting its quality of service to CLECs. SBC is liable for voluntary payments to the United States Treasury if its performance fails to meet certain benchmarks for a specified period of time.

Our search has identified a number of documents responsive to your request. These documents are separately indexed in an Attachment to this letter. On a monthly basis from December 2000 to May 2001, SBC filed with the Commission (a) a spreadsheet estimating the monthly payment approximately 10 days before it is made, and (b) a spreadsheet detailing the actual payment made. In June 2001, SBC submitted only a spreadsheet estimating its June payment. Both sets of spreadsheets report the gross payments amounts attributable to each SBC state and performance measurement, as well as offsets for performance-related payments made to CLECs under interconnection agreements and to states under their performance plans.

SBC submitted all of the documents in question to the Commission with requests for confidentiality pursuant to 47 C.F.R. § 0.459. See, e.g., Letter from Al Syeles, Executive Director, Federal Regulatory,

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SBC, to Mark Stone, Staff Attorney, Common Carrier Bureau, FCC (May 21, 2001). It was informed of your FOIA request and invited to respond, but SBC did not do so. A request for confidential treatment must include an explanation of the reasons for the request, as well as the facts upon which those reasons are based. 47 C.F.R. §§ 0.459 (a) and (b). The burden of proof rests with the submitting party to show by a preponderance of the evidence that nondisclosure is consistent with the provisions of the FOIA. 47 C.F.R. § 0.459(d).

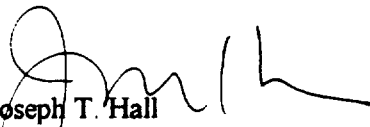
We base confidentiality determinations under section 0.459 on Exemption 4 of the FOIA, 5 U.S.C. § 0.552(b)(4), which permits us to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Under Exemption 4 of the FOIA, commercial or financial materials are held to be confidential when disclosure would be likely, *inter alia*, to substantially harm the competitive position of the submitter. *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (*National Parks I*). It is the submitter's responsibility to show that it actually faces competition and explain the manner in which the subject data could be used by competitors to inflict substantial competitive harm. Without such information, the Commission cannot conduct a reasoned analysis as to whether materials submitted in confidence may, in fact, be properly withheld under Exemption 4.

In this instance, SBC has offered no facts to support its claim of confidentiality. It proffers general statements that the reports contain competitively sensitive information that, if disclosed, would give SBC's competitors insight into SBC's business plans. Such generalities are insufficient under section 0.459(d) of our rules. Other than these general allegations, SBC makes no effort to show how its competitive posture would be harmed by the disclosure of the records in question. It fails to provide documentation upon which we may determine the likelihood of competitive harm resulting from release of the information at issue. We therefore lack any justification warranting a finding of confidentiality under Exemption 4 or our rules governing requests for confidentiality. As such, we must deny SBC's request for confidential treatment of the materials.

As a member of the news media, no search or review fees are assessed, and there is no charge for duplication of the first 100 pages of responsive material. 47 C.F.R. § 0.470(a)(2). Therefore, there are no fees associated with your FOIA request.

For the reasons set forth above, the requests for confidential treatment by SBC **ARE DENIED** and the request for inspection of records **IS GRANTED**. Pursuant to Section 0.461(i)(1) of our rules, 47 C.F.R. § 0.461(i)(1), SBC may file an application for review of the Bureau's decision to order release of its filing with the Office of General Counsel within 10 working days of the date of this letter.

Sincerely,


Joseph T. Hall
Assistant Bureau Chief, Management
Common Carrier Bureau

cc: Sandra Wagner, SBC
Al Syeles, SBC

ATTACHMENT

Material Available for Public Inspection

1. Letter to Mark Stone, FCC, dated October 31, 2000, with attachment.
2. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for October 2000 by Measure and State" (12/13/00).
3. Letter from Al Syeles, SBC, to Mark Stone, dated January 22, 2001, with attachments.
4. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for January 2001 by Measure and State" (3/26/01).
5. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for February 2001 by Measure and State" (7/2/01).
6. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for February 2001 by Measure and State" (4/12/01).
7. Letter from Albert Syeles to Mark Stone, dated March 26, 2001, with attachments.
8. Letter from Albert Syeles to Mark Stone, dated April 20, 2001, with attachments.
9. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for April 2001 by Measure and State" (6/14/01).
10. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for April 2001 by Measure and State" (7/6/01).
11. Letter from Albert Syeles to Mark Stone, dated April 20, 2001.
12. Letter from Albert Syeles to Mark Stone, dated May 21, 2001, with attachments.
13. Letter from Albert Syeles to Mark Stone, dated May 21, 2001, with attachments.
14. Spreadsheets (Southwestern Bell Telephone) and (Pacific and Nevada Bell Region).
15. Spreadsheet entitled "for November 2000 by Measure and State".
16. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for October 2000 by Measure and State" (1/17/01).
17. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for March 2001 by Measure and State" (5/24/01).
18. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for November 2000 by Measure and State" (1/17/01).
19. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for December 2000 by Measure and State" (2/23/01).

20. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for November 2000 by Measure and State" (1/29/01).
21. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for January 2001 by Measure and State" (3/16/01).
22. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for February 2001 by Measure and State" (4/23/01).
23. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for September 2000 by Measure and State" (11/30/00).
24. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for March 2001 by Measure and State" (6/15/01).
25. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for April 2001 by Measure and State" (6/15/01).
26. Spreadsheet entitled "Monthly Tier 3 Voluntary Payment Summary for January 2001 by Measure and State" (7/2/01).
27. Electronic version of payment calculation details.